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10/773,486	02/06/2004	Willy Maurice Verbestel	555255012562	6813
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Jones Day (RIM) - 2N North Point 901 Lakeside Avenue Cleveland, OH 44114			EXAMINER SIDDIQI, MOHAMMAD A	
			ART UNIT 2454	PAPER NUMBER
			NOTIFICATION DATE 04/15/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/773,486

**Applicant(s)**

VERBESTEL, WILLY MAURICE

**Examiner**

MOHAMMAD A. SIDDIQI

**Art Unit**

2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23, 26 and 27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-23, 26 and 27 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-23 and 26-27 are examined. Claims 24-25 have been cancelled.

***Response to Arguments***

2. Applicant's arguments filed on 04/27/2009, with respect to claims 1, 26, and 27 have been fully considered and are persuasive. The final rejection has been withdrawn.
3. Applicant's arguments with respect to claims 1, 26, and 27 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 101***

4. Claim 23 is rejected under 35 U.S.C. § 101 for being non statutory. The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the

ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal per se, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101, Aug. 24, 2009; p. 2.

The USPTO recognizes that applicants may have claims directed to computer readable media that cover signals per se, which the USPTO must reject under 35 U.S.C. § 101 as covering both non-statutory subject matter and statutory subject matter. In an effort to assist the patent community in overcoming a rejection or potential rejection under 35 U.S.C. § 101 in this situation, the USPTO suggests the following approach. A claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation "non-transitory" to the claim. Cf. *Animals – Patentability*, 1077 Off. Gaz. Pat. Office 24 (April 21, 1987) (suggesting that applicants add the limitation "non-human" to a claim covering a multi-cellular organism to avoid a rejection under 35 U.S.C. § 101). Such an amendment would typically not raise the issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals per se. The limited situations in which such an amendment could raise issues of new matter occur, for

example, when the specification does not support a non-transitory embodiment because a signal per se is the only viable embodiment such that the amended claim is impermissibly broadened beyond the supporting disclosure. See, e.g., *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473 (Fed. Cir. 1998).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1, 26 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Akiyama et al. (7,072,865) (Hereinafter Akiyama).

7. As per claim 1, Akiyama discloses a multicast content accessing method for use on a user device, wherein a multicast service provides the multicast content , comprising:

receiving multicast service activation data over a network (fig 51);

generating on the user device a broadcast key (broadcast receiver places a call and sends call originating command packet, the command packet includes the key containing receiver ID [col 32, lines 40-43]; figs. 47-50, col 31, lines 56-60);

sending from the user device the generated broadcast key over a network (broadcast receiver places a call and sends call originating command packet, the command packet includes the key containing receiver ID, figs. 47-50, col 32, lines 11-43);

wherein the generated broadcast key indicates that multicast content is to be provided to the user device (broadcast wave, fig 50, col 32. lines 4-24; col 2, lines 36-43).

8. As per claim 26, the claim is rejected for the same reason as claim 1, above in addition, Akiyama discloses a data storage mechanism that stores user identification key and multicast service activation data (fig 51, broadcast receiver stores the key information locally [see fig 51], the command packet includes the key containing receiver ID col 32, lines 40-43); key generation operation instructions configured to generate on the user device a broadcast key based upon the stored user identification key and the multicast service activation data (broadcast receiver places a call and sends call originating command packet, the command packet includes the key containing receiver ID [col 32, lines 40-43]; figs. 47-50, col 31, lines 56-60); wherein the

generated broadcast key indicates that multicast content is to be provided to the user device (broadcast wave, fig 50, col 32. lines 4-24; col 2, lines 36-43).

9. As per claim 27, the claim is rejected for the same reason as claim 26, above in addition.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2 -23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akiyama et al. (7,072,865) (Hereinafter Akiyama) in view of Sarkkinen et al. (20050015583) (Hereinafter Sarkkinen).

As per claim 2, Akiyama fails to disclose the multicast content is transmitted to the user device via a unidirectional point-to-multipoint transmission. However, Sarkkinen discloses the multicast content is transmitted to the user device via a unidirectional point-to-multipoint transmission (para #0012; para #0019). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Akiyama and Sarkkinen. The motivation would have been to provide

secure pay broadcast services, which can prevent wrong audience without pressing the broadcast band even when the number of subscribers increases.

12. As per claim 3, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the unidirectional point-to-multipoint transmission occurs over a 3G wireless network (para #0019; para #0179).

13. As per claim 4, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the unidirectional point-to-multipoint transmission occurs within a Multimedia Broadcast/Multicast Service (MBMS) system (fig 7, Para #0210).

14. As per claim 5, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the multicast content includes messages, text, audio, pictures, or video from a single source (para #0093).

15. As per claim 6, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses a subscription to the multicast service allows the user device to receive the multicast content (para #0120).

16. As per claim 7, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses other user devices subscribe to the multicast service (UE, fig 7, para #0034), thereby forming a multicast subscription group (para #0034); wherein

a subset of user devices from the multicast subscription group are receiving the multicast content (para #0034).

17. As per claim 8, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the broadcast key is common to all subscribers of a given multicast service and is used to access the multicast content (fig 7, para #0034).

18. As per claim 9, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses a virtual key is provided to the user device that indicates to the user device to clear the broadcast key used to access the multicast service (para #0028, ciphering key).

19. As per claim 10, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the received multicast service activation data activates for the user device the multicast service that provides the multicast content (para #0029).

20. As per claim 11, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the broadcast key is generated on the user device based upon the received multicast service activation data (para #0030).

21. As per claim 12, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the broadcast key is generated on the user device based

upon a user identification key (para #0030-#0032).

22. As per claim 13, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the broadcast key is generated on the user device based upon a user identification key and the received multicast service activation data (para #0030-#0032).

23. As per claim 14, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the user identification key is provided to the user device at about the time when a user of the user device subscribes to the multicast service (para #0053).

24. As per claim 15, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the multicast service activation data is an activation key that is provided at about the time when a contract or payment is received from a user of the user device (para #0133).

25. As per claim 16, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the multicast service activation data is different for each user of the multicast service (para #0133-#0134).

26. As per claim 17, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the broadcast key is generated on the user device by applying a function to a user identification key and the received multicast service activation data (para 30135-#0139).

27. As per claim 18, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the same broadcast key value is generated by user devices having different multicast service activation data (para #0135-#0139).

28. As per claim 19, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses a user device's broadcast key generation function is known to the user device but is not known to other user devices (SIM, para #0146).

29. As per claim 20, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the broadcast key generated by the function can be changed by providing a different activation keys to the provider (para #0126).

30. As per claim 21, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the user device accesses different multicast services of a provider by providing different broadcast keys to the provider (para #0150; #0271; ); wherein the different broadcast keys are generated on the user device (para #0150;

para #0271).

31. As per claim 22, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses the user device is a handheld wireless mobile communications device (para #0156).

32. As per claim 23, the claim is rejected for the same reasons as claim 2 above. In addition, Sarkkinen discloses Computer-readable medium capable of causing a user device to perform the method of claim 1 (para #0159).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD A. SIDDIQI whose telephone number is (571)272-3976. The examiner can normally be reached on Monday -Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NATHAN FLYNN/  
Supervisory Patent Examiner, Art Unit 2454

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